Application No.: 10/511,024 Docket No.: JCLA14658

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REMARKS

Response to Restriction Requirement

The Examiner has issued a restriction requirement dated June 27, 2006. According to the Office Action, the instant application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general invention concept under PCT Rule 13.1.

According to the species made by the Office Action, Applicant **elects the Specie A: drawn to claims 1-9, wherein claims 2-8 are dependent claims, with the electing of two herbs, which are Lightyellow Sophora Root and Isatis Leaf, in claim 1.**

Please cancel claims 10-13 without prejudice, disclaimer, or waiver.

Applicant also reserves the right to pursue the subject matter of the non-elected and cancelled claims 10-13 in a divisional application if Applicants so choose.

Additionally, Applicants would like to traverse the restriction requirement based on the following:

The instant application is a PCT International application filed under 371 as shown below in a cut-out portion from the corresponding 371 acceptance letter:

Application No.: 10/511,024 **Docket No.: JCLA14658**

U.S. APPLICATION NUMBER NO	FIRST NAMED APPLICANT	ATTY. DOCKET NO
10/511,024	Tetsuo Santo	JCLA14658

INTERNATIONAL APPLICATION NO
PCT/JP02/03749

I.A. FILING DATE	PRIORITY DATE
04/15/2002	

J C Patents Inc
Suite 250
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CONFIRMATION NO. 8756
371 ACCEPTANCE LETTER

Date Mailed: 05/06/2005

NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C 371 AND 37 CFR 1.495

The applicant is hereby advised that the United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495), has determined that the above identified international application has met the requirements of 35 U.S.C. 371, and is ACCEPTED for national patentability examination in the United States Patent and Trademark Office.

The United States Application Number assigned to the application is shown above and the relevant dates are:

04/06/2005	04/06/2005
DATE OF RECEIPT OF 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) REQUIREMENTS	DATE OF COMPLETION OF ALL 35 U.S.C. 371 REQUIREMENTS

Therefore, the restriction practice recited in MPEP 809.02(a) for applications which are Filed Under 35 U.S.C. 111 as described in the Restriction Requirement is clearly **NOT APPLICABLE.**

The instant application should be governed by the rules for applications filed under 35 USC 371 for "Unity of Invention" as recited in the MPEP 1850 "Unity of Invention before the International Searching Authority."

According to the MPEP 1850, the following are recited:

"... the International Searching Authority or the International Preliminary Examining Authority should not raise objection of lack of unity of invention merely because the inventions claimed are classified in separate classification groups or merely for the purpose of restricting the international search to certain classification groups.....

....**Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims.** .....

.....If the independent claims avoid the prior art and satisfy the requirement of unity of invention, **no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention.....**"

As a result, since only claim 1 is the independent claim and claims 2-13 are all dependent claims which dependent upon claim 1, the Unity of invention has to be considered in the first place only in relation to the independent claim 1 in the present international application filed under 35 USC 371 (PCT) and not the dependent claims 2-13. Therefore, claims 2-13 should be allowable as is.

Furthermore, one main argument in the Restriction Requirement on page 3 for basis for "the species lack the same or corresponding special technical feature" is that several of the claims are distinct "both physically and functionally from each other" and "search for one .... is not co-extensive with a search of any of the other ..."

However, as recited below from MPEP 1893.03(d): "....A group of inventions is

considered linked to form a single general inventive concept where there is a technical relationship among the inventions that **involves <u>at least one</u> common** or corresponding special technical feature. **The expression special technical features is defined as** meaning those technical features that define the **contribution which each claimed invention, considered as a whole, makes over the prior art....**"

It is important to note that the single general inventive concept of the instant application is as recited in page 1 in the specification: "... relates to a drinkable tea for therapy of dermatitis". There are certainly technical relationships present among the inventions of the medicinal herb and of the auxiliary material that **involves <u>at least one</u> common** special technical feature of "adding a pharmacological effect" (found in page 10). Therefore, the group of inventions in the instant application are considered linked to form a single general inventive concept, and amended claims 1-13 should be allowed.

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CONCLUSION

In view of the foregoing, claims 1-9 remain pending in the application. Favorable consideration and allowance of the present application and all pending claims are hereby courteously requested. In the event a telephone conversation would expedite the prosecution of this application, the Examiner is encouraged to contact the undersigned to discuss the application.

Respectfully submitted,
J.C. PATENTS

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